IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RFA No. 116 of 2001

Date of Decision : November 13, 2009

Smt. Krishna Devi and another — Appellants.

Versus

State of Himachal Pradesh through the Land Acquisition Collector(I), HPPWD, Shimla-2. — Respondent

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Coram:

Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] No.

For the appellants : Mr. M. S. Thakur, Advocate and Mr. Inderjit Singh Narwal, Advocate, for the appellants.

For the respondent : Mr. Vivek Thakur, Addl. Advocate General for the respondent.

Sanjay Karol, J. (Oral)

The claimants herein have assailed the impugned award dated 21.12.2000 passed by the District Judge, Kinnaur Civil Division at Rampur Bushahr, H.P. in Land reference Petition No. 304 of 1995/94, titled as Krishna Devi and another versus The State of H.P.

For the public purpose namely construction of "Rampur-Sarahan Highway" land in village Tyawal, Tehsil Rampur, District Shimla was acquired by the State. Notification dated 24.10.1991 under Section 4 of the Land Acquisition Act, 1894 (hereinafter

[1] **Whether reports of Local Papers may be allowed to see the judgment?**

referred to as the Act) was published in the H.P. Rajpatra on 21.12.1991. The Collector issued award No. SML. 2/91 on 19.9.1992. In terms of the award the market value of the land with respect to different categories was determined as Rs. 24744/- for Kiar Awal; Rs. 19554.80 for Kiar Doem; Rs. 11973/- for Bakhal Awal; Rs. 7583/- for Kral Awal; Rs.1197.40 for Krali Doem & other types of land.

The claimants' land is of category 'Kiar Awal' measuring only 10 biswas (Approx.).

Being dissatisfied, the claimants filed land reference petition under Section 18 of the Act which stands decided in terms of the impugned award dated 21.12.2000. While passing the impugned award the Court below enhanced the market value of the claimants' land to be Rs. 2500/- (Approx.) per biswa, however set aside that part of the award whereby compensation from the date of taking over the actual possession of the acquired land i.e. 1.1.1966 had been awarded by the Collector.

At the time of hearing the learned counsel for the claimants fairly stated that keeping in view the position in law, as stated in the affidavit dated 9.6.2009 filed by the LR-cum-Secretary (Law) to the Government of Himachal Pradesh, the impugned award to the extent it interfered with the Collectors award cannot be interfered with by this Court.

However with respect to the determination of the fair market value of the acquired land, Mr. M. S. Thakur, learned counsel has invited my attention to the statements of Sh. Manish Kumar (PW-2), Sh. Mangal Sain (PW-3) and Sh. Mangat Ram (PW-4).

PW-2 has proved the sale deed executed on 26.11.1990 whereby the market value comes to Rs. 11,000/- per biswa. PW-4 has proved sale deed dated 28.10.1991 whereby land was sold for a sum of Rs. 15,000/- per biswa. Both the sale deeds pertain to small parcel of land and are situated in the same area of the acquired land. The instant acquired land is also small. These sale deeds evidence the fact that there has been an increase in the prices of the land in the area. Importantly the claimants' witnesses have proved the similarity of the size, location, use and potential of the acquired land with that of the exemplar sale lands. The claimants land was fertile and used for agricultural purposes. Hence the same can safely be relied upon for determining the market value.

In my view the average of both the above sale deeds can be made basis for determining the market value of the acquired land which comes to Rs. 11,000 + Rs. 15,000 = Rs. 26,000/2 = Rs. 13,000/-. To this extent the Court below has erred in not correctly appreciating the material on record. In fact there is no reference of the said sale deeds in the impugned award. Hence the impugned award is modified and the market value of the claimants' land is held

to be Rs. 13,000/- per biswa. Claimants are also entitled to all statutory benefits as awarded in the impugned award.

The State has only examined Sh. Balak Ram (RW-1) Patwari Halqua who has simply tendered in evidence the average market price as per statement Ext. RW1/A pertaining to the period 21.12.1990 up to 20.12.1991.

It is a settled law that annual average price maintained by the revenue authorities cannot be made basis for determining the market value of the land acquired under the Act [*Cement Corpn. of India Ltd. versus Purya and others,* (2004) 8 SCC 270].

State also tendered in evidence copies of mutation Ext. RW1/B, Ext. RW1/C and Ext. RW1/D but without leading any evidence to prove the similarity, proximity and comparability of the acquired land with the lands mentioned in the said documents. Hence they cannot be made basis for determining the market value of the acquired land.

For the aforesaid reasons the appeal is allowed. The impugned award is modified to the aforesaid extent.

(Sanjay Karol),
Judge.

November 13, 2009
(PK)